

**FLORIDA'S PROHIBITION ON ADVANCED REGISTERED NURSE PRACTITIONERS
(ARNPs) PRESCRIBING CONTROLLED SUBSTANCES AND THE REQUIREMENTS TO
REPORT SUCH ACTIVITY**

Florida is one of the two states that does not allow advanced registered nurse practitioners (ARNPs) to prescribe controlled substances such as narcotics. Provided the ARNPs protocol with her or his supervising physicians allows it, the ARNP may prescribe other medications which are not controlled substances.

SCOPE OF PRACTICE FOR ARNPS

Licensed practical nurses (LPNs), RNs and ARNPs are all licensed by the Board of Nursing and regulated by Chapters 456 and 464, Florida Statutes.

It is beyond the scope of practice and a violation of Section 464.0012(3), Florida Statutes (the Nurse Practice Act) for a registered nurse (RN) or an ARNP in Florida to prescribe any controlled substance in Florida. The Florida Board of Nursing makes this clear in the sample ARNP protocol it publishes. This should also be clearly stated in the subject ARNP's protocol.

Section 464.0012(3), Florida Statutes, defines the scope of nursing for an ARNP to include those tasks a registered nurse can perform, as well as the following additional tasks:

- (a) Monitor and alter drug therapies;
- (b) Initiate appropriate therapies for certain conditions;
- (c) Perform additional functions as may be determined by rule in accordance with Section 464.003(2), Florida Statutes; and
- (d) Order diagnostic tests and physical and occupational therapy.

It is a violation of the Nurse Practice Act to: "violate any provision of [Chapter 464, Florida Statutes] or Chapter 456 [Florida Statutes], or any rules adopted pursuant thereto." Section 464.018(1)(o), Florida Statutes.

While an ARNP in Florida is authorized to initiate and alter drug therapies under the Nurse Practice Act, an ARNP is not authorized to prescribe to a patient a controlled substance.

Section 893.05(1), Florida Statutes, a section of Florida's Comprehensive Drug Abuse Prevention and Control Act, which provides criminal penalties, states in pertinent:

A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance, or the practitioner may cause the same to be administered by a licensed nurse or an intern practitioner under his or her direction and supervision only. (Emphasis added.)

"Practitioner" is defined in Section 893.02(20), Florida Statutes, as:

. . . a physician licensed pursuant to Chapter 458, a dentist licensed pursuant to Chapter 466, a veterinarian licensed pursuant to Chapter 474, an osteopathic physician licensed pursuant to Chapter 459, a naturopath licensed pursuant to Chapter 462, or a podiatric physician licensed pursuant to Chapter 461, provided such practitioner holds a valid federal controlled substance registry number.

Note specifically that RNs and ARNPs are not defined as "practitioners" by Section 893.02(20), Florida Statutes, and, therefore, are not authorized by Section 893.05(1), Florida Statutes, to prescribe any controlled substance.

Additionally, the U.S. Drug Enforcement Administration (DEA) can only provide a valid federal controlled substance registry number (DEA number) to those individuals who are authorized to prescribe controlled substances in the jurisdiction. 21 C.F.R. 1306.03(a). Since Section 893.02(20), Florida Statutes, does not include an ARNP as a health care practitioner who is authorized under Florida law to prescribe controlled substances, the DEA should not issue an ARNP a DEA number.

Without a DEA number an ARNP would be unable to legally prescribe a controlled substance.

Furthermore, these facts are clearly emphasized to nurses by the Florida Board of Nursing. For example, on the Florida Board of Nursing's website, in the Frequently Asked Questions (FAQ) section the following information is given:

Q: Can a nurse practitioner write prescriptions for controlled substances?

A: No, federal law requires that anyone prescribing

controlled substances have a DEA license number. All prescriptions for controlled substances should be written and signed by a licensed physician.

Thus, while an ARNP is authorized to initiate and alter drug therapies under the Nurse Practice Act, an ARNP is not permitted to prescribe a controlled substance. By prescribing a controlled substance, the ARNP of the medical group has exceeded the authority granted to the ARNP under the Nurse Practice Act.

Other wrongful acts that may be related to an ARNPs illegal prescription of a controlled substance in Florida include the following:

- Forging a physician's signature on a prescription.
- Possessing or using incomplete or blank prescription forms pre-signed by a physician (also illegal for the physician to do this).
- Using a physician's DEA number on a prescription form the ARNP completes.

DUTY OF PHYSICIANS AND NURSES TO REPORT SUCH MISCONDUCT

Chapter 464, Florida Statutes, governs the actions of registered nurses, including ARNPs. A registered nurse is subject to discipline pursuant to Section 464.018(1)(k), Florida Statutes, if the registered nurse:

[fails] to report to the department [Department of Health] any person who the licensee knows is in violation of this part or of the rules of the department [Department of Health] or the board [Board of Nursing]. . . .

Section 464.018(1)(k), Florida Statutes, places a duty on a registered nurse to report another nurse, including an ARNP, who the nurse knows in violation of the Nurse Practice Act or any rule of the Board of Nursing. Any other LPN, RN or ARNP who is aware of such conduct violating the Nurse Practice Act must report it.

Additionally, Section 456.072(1)(i), Florida Statutes, which applies to all licensed health care practitioner in Florida, including both medical doctors and registered nurses, states that a health care practitioner is subject to discipline for:

. . . failing to report to the department [Department of

Health] any person who the licensee knows is in violation of this chapter, the chapter regulating the alleged violator, or the rules of the department [Department of Health] or the board [Board of Nursing].

Section 456.072(1)(i), Florida Statutes, which applies to all health care practitioners, places a duty on a health care practitioner to report an individual to the appropriate board when that health care practitioner knows the individual is in violation of Chapter 456 or Chapter 464, Florida Statutes. This Section places an affirmative duty on both nurses and medical doctors, to report the ARNP who has violated the Nurse Practice Act and prescribed a controlled substance to the Department of Health.

A doctor of medicine licensed in Florida is required to report a violation, such as an ARNP's illegally prescribing controlled substances, to the Department of Health (DOH) by Section 456.072(1)(i), Florida Statutes. A nurse licensed in Florida is required to report such a violation to the DOH by Sections 456.072(1)(i) and 464.018(1)(k), Florida Statutes. Failure to report, if later discovered by the DOH or other regulatory authority, may result in charges then being made against the physicians or nurse who has failed to report the violation.

As a general rule any licensed health care practitioner in a medical group, nursing facility, hospital or other organization, with knowledge of such actions taken by an ARNP have an affirmative duty to report the actions of the ARNP to the Department of Health. In a group or institution, often the risk manager or administrator is tasked with this responsibility on behalf of the group or institution and those within it.

Once reported, the Department of Health will open an investigation of the matter. Witnesses may be interviewed, may provide statements or may provide additional information and documents. The case will most probably be presented to the Probable Cause Panel (PCP) of the Board of Nursing (similar to a subcommittee of the Board of Nursing). The PCP will review the case and may decide that no probable case exists and dismiss the case, may decide to issue the ARNP a letter of guidance or warning (not considered to be discipline) and dismiss the case or may recommend filing an administrative complaint and charging the nurse administratively.

Our firm routinely represents nurses, advanced registered nurse practitioners, and physicians in licensure and disciplinary matters, in Department of Health investigations, in Medicare and Medicaid audits and investigations, in matters involving allegations of over-prescribing or wrongfully prescribing controlled substances, in allegations of forging prescriptions and in similar matters. Anyone reported for or accused of such matters should immediately retain the services of an experienced health law attorney and not make a statement to anyone unless advised to do so by their attorney. Often criminal defense attorneys will not be familiar with health care laws and regulations requiring the revocation of a your license, even if there is a nolo contendere plea or even if the adjudication is deferred.

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